

1 THE HONORABLE JOHN C. COUGHENOUR
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 JEROME ISHAM,

13 Defendant.

14 CASE NO. CR18-0217-JCC-9

ORDER

15 This matter comes before the Court on Defendant's motion for compassionate release
16 (Dkt. No. 1113). Having thoroughly considered the briefing and the relevant record, the Court
17 DENIES Defendant's motion for the reasons explained herein.

18 In November 2021, the Court sentenced Defendant to 120 months in the custody of the
19 Bureau of Prisons ("BOP") and five years of mandatory supervised release after a jury convicted
20 him of conspiracy to distribute controlled substances. (See Dkt. Nos. 859, 970, 980.)

21 On April 10, 2024, while working out, Defendant began experiencing back pain,
22 discomfort in his chest, and numb legs. (Dkt. No. 1113 at 3.) On April 12, 2024, he was
23 diagnosed with an acute epidural hematoma, acute back pain, and acute abnormal gait. (*Id.* at 3.)
24 At the time, BOP's Health Services prescribed oral steroids and Tylenol to treat the pain. (*Id.* at
25 3–4.) The pain persisted and, on June 13, 2024, a BOP health clinic provider recommended
26 surgical intervention, namely a laminectomy and decompression of Defendant's spinal cord,

1 followed by intense physical therapy, to treat his epidural hematoma. (*See id.* at 5.) Defendant
 2 underwent surgery on June 26, 2024. (*Id.*) Defendant continues to suffer back pain and contends
 3 that, had the BOP reacted more quickly to his back injury, his chance for a full recovery would
 4 have been much higher than it currently is now. (Dkt. No. 1126 at 1.) Moreover, Defendant
 5 argues that whatever chance he has left will continue to be compromised by what he describes as
 6 BOP's inadequate medical care. (*Id.* at 6.) Defendant moves for compassionate release "based on
 7 the gravity of [this] medical condition." (Dkt. No. 1113 at 1.)

8 The Court may reduce a term of imprisonment if the defendant has exhausted his
 9 administrative remedies with BOP, extraordinary and compelling reasons warrant a reduction,
 10 and a reduction is consistent with the applicable policy statements issued by the Sentencing
 11 Commission. *See* 18 U.S.C. § 3582(c)(1)(A); United States Sentencing Guidelines ("USSG")
 12 § 1B1.13. The Court must also consider the factors articulated in 18 U.S.C. § 3553(a). *See* USSG
 13 § 1B1.13(a). Defendant bears the burden of making this showing. *See U.S. v. DeVore*, 2024 WL
 14 3226683, slip op. at 1 (W.D. Wash. 2024).

15 While Defendant presents undisputed evidence of exhaustion,¹ (*see* Dkt. No. 1113 at 7–8;
 16 *see also generally* Dkt. No. 1113-1) (warden's denial of request for compassionate release), he
 17 fails to establish the extraordinary and compelling circumstances required for a reduction in
 18 sentence.² Defendant has not been diagnosed with a terminal illness or an illness that
 19 substantially diminishes his ability to care for himself in prison from which he is not expected to

20
 21 ¹ Defendant presented a request for compassionate release to the BOP facility's warden, which
 22 the warden promptly denied, and waited 30 days before seeking relief from the Court. (*See*
 23 *generally* Dkt. No. 1113-1.) The Government does not otherwise dispute that Defendant has
 24 satisfied the exhaustion requirement. (*See generally* Dkt. No. 1119.)

25
 26 ² Extraordinary and compelling medical reasons include: (1) suffering from a terminal illness; (2)
 suffering from a serious condition that substantially diminishes the ability of the defendant to
 provide self-care within a correctional facility and from which the defendant is not expected to
 recover; and (3) suffering from a medical condition that requires long-term specialized medical
 care that is not being provided and without which the defendant is at risk of serious deterioration
 in health or death. *See* USSG § 1B1.13(b)(1).

1 recover. (*See generally id.*) And while Defendant does require long-term specialized medical
 2 care as a result of his back surgery—that is, a year of intense rehabilitation in the form of
 3 physical therapy sessions, (*see Dkt. No. 1113 at 5*)—he has been receiving this care on a weekly
 4 basis since his surgery. (*See Dkt. No. 1121 at 147*) (stating that Defendant has had 10 physical
 5 therapy sessions since surgery). In fact, over the course of these sessions, Defendant’s pain levels
 6 have gone down from a six or seven out of ten to a three or four out of ten. (*See id.* at 119–23,
 7 96–101, 85–87, 141–44) (notes from weekly physical therapy meetings in chronological order).
 8 BOP’s Health Services even authorized eight more weekly sessions starting on September 3,
 9 2024. (*See id.* at 147–48.) In addition, Defendant has or shortly will be transferred from FPC
 10 Yankton to a BOP medical facility for further care. (Dkt. No. 1126 at 7.)

11 The record does not otherwise suggest that Defendant is at risk of serious deterioration in
 12 health or death.³ As such, not only is Defendant receiving prompt and adequate post-operation
 13 care, but the care is *working*—thus dispelling any notion that Defendant is at risk of serious
 14 deterioration in health or death. Defendant has not established the requisite extraordinary and
 15 compelling medical circumstances.

16 Accordingly, the Court DENIES Defendant’s motion (Dkt. No. 1113).

17 //

18 //

19 //

20

21 ³ To be sure, Defendant does allege that “[h]ad the BOP medical staff acted quickly and within
 22 two weeks instead of 46 days to get Mr. Isham to his second MRI, his chances for a full recovery
 23 would have increased significantly. Instead, he has been told that he has a 50/50 chance of a full
 24 recovery.” (*Id.* at 6.) However, Defendant provides no support for this assertion. Instead, he
 25 argues that the Government should have contacted the back specialist and/or the surgeon who
 26 performed his surgery for proof of this assertion. (*See Dkt. No. 1126-1 at 6*.) Unfortunately, this
 argument is fundamentally flawed, as it is Defendant who bears the burden of establishing
 extraordinary and compelling reasons justifying a reduction in his sentence. *See DeVore*, 2024
 WL 3226683, slip op. at 1. Moreover, it fails to establish BOP’s inability to provide adequate
 care *in the future*.

1 It is so ORDERED this 5th day of November 2024.
2
3
4
5

John C. Coughenour
UNITED STATES DISTRICT JUDGE